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10/565,180

04/05/2007

Volker Gandert

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EXAMINER

LEUNG, KA CHUN A

ART UNIT

PAPER NUMBER

3747

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/565,180 | Applicant(s) GANDERT, VOLKER | |
| | Examiner Ka Chun Leung | Art Unit 3747 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 8-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/18/2006 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/18/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 01/18/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Note that the while references that have not considered are listed in the International Search Report, copies of these foreign references have not been provided by either the Applicant or the International Searching Authority. The DE 197 32 924 A1 reference has been separately cited in the PTO-892 and a copy has been included.

Specification

2. The disclosure is objected to because of the following informalities: on Page 5, Line 19 of the Substitute Specification there appears to be a typographical error. In the noted section, reference is made to "Figure 2", however the components and associated reference numerals discussed are only found in Figure 1 of the drawings. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, Claim 9 recites the limitation of “releasing the at least one vehicle brake again after an engine startup” (emphasis added). While support is provided for releasing the at least one brake after the starting authorization request has been terminated after the engine has been started up (see for example Page 6, Lines -5-11 and Page 7 Lines 4-8 of the Substitute Specification), there is no support provided for releasing the vehicle brake “again” which indicates that it was released at least once prior.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recites “releasing the at least one vehicle brake again after an engine startup” (emphasis added). The claim is rendered indefinite since it is unclear how the brake is released again if there are no steps prescribed for releasing it a first or earlier point in time.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Salecker et al

9. Claims 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salecker et al (GB 2 317 660 A). Salecker et al discloses an engine start control and as described on Page 21, Lines 10-27, the control checks in block 102 to determine whether the gear box is in neutral or engaged. If the gear box is not in neutral, then in block 104, "the clutch is opened automatically and at least one vehicle brake, such as parking brake or operating brake is operated automatically." Afterwards in block 105, a starter release is provided and the engine is started in block 106. See also Figure 2. However, Salecker et al does not disclose "making a check as to whether the vehicle is stationary".

10. Specifically regarding Claim 8 and the limitation of “making a check as to whether the vehicle is stationary”, a driver or operator would inherently check to see if the vehicle is stationary. If the vehicle were to be in motion (i.e. the vehicle is already in operation, or if the vehicle begins rolling down the hill after being parked) the driver would not be concerned with trying to start the engine. Note that given the broadest reasonable interpretation, the method as claimed does not preclude a driver/operator from performing at least a portion of the recited steps.

11. Specifically regarding Claim 9, as best interpreted, the brakes activated by the steps of Salecker et al would be released at least by the point when the vehicle is actually driven.

12. Specifically regarding Claim 10, the steps of Salecker et al proceeds from block 102 to 106 if the gear box is not in neutral. At block 105 starter release is provided and at block 106 the engine is started. Since the blocks are followed from one to the next without other inputs and the engine is started at block 106 after the starter release is provided at block 106, this process can be considered as "automatically starting the engine".

13. Specifically regarding Claim 11, Salecker et al discloses on Page 9, Lines 28-35 that a starter release is provided if the neutral position is engages within a predefined time length of 0.1 to 10 seconds. If a starter release is not provided, the engine is not automatically started.

14. Specifically regarding Claim 12, block 102 performs the task of determining whether the gear box is in neutral.

15. Specifically regarding Claim 13, block 104 opens the clutch and block 105 provides a starter release after the clutch has been opened.

16. Additionally regarding Claims 8-13, note that the method of Claim 8 could also be met if a driver of a manual transmission automobile performs a "push start" - that is an engine with a manual transmission can be started without the aid of a starter by pushing a vehicle or having the vehicle being started by rolling down an incline. In performing a "push start" the driver would cause the vehicle to become in motion and in doing so would be checking to see if the vehicle is stationary (or not stationary as the case may be). Since the vehicle would have to be in motion to perform the "push start", the vehicle would not be stationary and the remainder of the method would not have to be carried out. Note that Claims 9-13 require the starting authorization of Claim 8 which occurs only "if the vehicle is stationary" and therefore would not need to be carried out.

17. Further note that it is well known in the art for drivers of manual transmission vehicles to depress both the clutch and the brake pedals prior to turning the ignition key switch. The act of turning the ignition can be considered as "authorizing a starting of the engine". Since a driver would subconsciously check to see whether their vehicle is stationary or not as they approach (as it would be quite apparent if it were rolling away) prior to getting in and starting their vehicle, the method as claimed in Claim 8 given its broadest reasonable interpretation would be met by following general starting operating procedures of a manual transmission vehicle.

18. Specifically regarding Claim 14, referring to the "push start" described directly above, the driver would personally authorize the starting of the engine by turning the

ignition switch once the vehicle is in gear and in motion in order to start the vehicle without the aid an engine starter (i.e. dead battery).

Balz et al

19. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Balz et al (WO 99/50112). Balz et al discloses an electric control unit that applies the parking brake system before starting the vehicle. However, Balz et al does not distinctly disclose "making a check as to whether the vehicle is stationary".

20. Specifically regarding Claim 8, a driver would subconsciously check to see whether their vehicle is stationary or not as they approach (as it would be quite apparent if it were rolling away) prior to getting in and starting their vehicle, the method as claimed in Claim 8 given its broadest reasonable interpretation would be met once the driver performs the check and then starts a vehicle with the electric parking brake system as disclosed by Balz et al.

21. Specifically regarding Claim 9, as best interpreted, Balz et al discloses releasing the parking brake system during the starting operation of the vehicle by means of suitable dynamics.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. US Patent 6,702,405 has been cited as an English equivalent of WO 99/50112.
- b. The articles entitled "Manual Transmission" and "How to Push-Start a Car with a Dead Battery" have been cited as related art for general reference and are not considered as prior art since their publication dates do not meet the present application's priority date.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ka Chun Leung whose telephone number is (571)272-9963. The examiner can normally be reached on 7:30AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Cronin can be reached on (571) 272-4536. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Ka Chun Leung/
Examiner, Art Unit 3747

/Stephen K. Cronin/
Supervisory Patent Examiner, Art Unit 3747